

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF OKLAHOMA**

REDBIRD BUSINESS GROUP, LLC;)	
REDBIRD BIOSCIENCE OKLAHOMA,)	
LLC; and RB REALTYCO, LLC,)	
)	
Plaintiffs and)	
Counter-Defendants,)	
)	
v.)	Case No. CIV-20-098-JAR
)	
MATTHEW HARRISON,)	
)	
Defendant and)	
Counter-Claimant.)	

OPINION AND ORDER

This matter comes before the Court on Defendant/Counterclaimant's Motion to Set Rate for Pre-Judgment and Post-Judgment Interest (Docket Entry #177). This Court conducted a hearing to receive oral argument on this Motion.

As an initial matter, it appears the parties are in agreement that federal rate of interest should be imposed upon the judgment awarded in this case for the period post-judgment. This would appear to reflect the current state of the law. Soc'y of Lloyd's v. Reinhart, 402 F.3d 982, 1004 (10th Cir. 2005) ("absent 'clear, unambiguous and unequivocal [contractual] language' expressing the parties' intent that a different post-judgment interest rate apply, post-judgment interest is governed by federal law."). Therefore, post-judgment interest will accrue pursuant to 28 U.S.C. § 1961(a).

The parties have differing views as to the appropriate rate of interest to be applied pre-judgment. Harrison contends that New York law should set the rate of interest since pre-judgment interest is an element of compensatory damages and New York law governed the Employment Agreement which was the subject of the dispute in this case. Based upon Harrison's argument, the rate to be applied would be set at the time of the breach of the contract - January 30, 2020 - and would accrue at a rate of 9.00%

For their part, the Redbird entities contend that, since this Court did not set out that pre-judgment interest was awarded, it should not be a part of the judgment amount. Redbird also contends Harrison did not request pre-judgment interest. Alternatively, Redbird requests that this Court exercise discretion and apply the Federal Funds rate from March of 2020 until March 31, 2023, which according to Redbird ranges from 5.00% to 10.00%.

"Prejudgment interest is an element of compensatory damages and is part of the actual damages sought." Morrison Knudsen Corp. v. Ground Improvement Techniques, Inc., 532 F.3d 1063, 1077 (10th Cir.2008). As such, "the law governing compensatory damages also governs prejudgment interest." Id. (quoting Johnson v. Cont'l Airlines Corp., 964 F.2d 1059, 1064 (10th Cir. 1992)). It is clear that New York law should apply in the determination of the rate of pre-judgment interest.

The fact Harrison did not seek pre-judgment interest in his Counterclaim does not bar his current request. "Under New York law, 'prejudgment interest is normally recoverable as a matter of right in an action at law for breach of contract.'" New England Ins. Co. v. Healthcare Underwriters Mut. Ins. Co., 352 F.3d 599, 606 (2d Cir. 2003) quoting Graham v. James, 144 F.3d 229, 239 (2d Cir. 1998). N.Y. C.P.L.R. 5001(a) makes such interest mandatory in providing that "interest shall be recovered. . . ." Id.

New York law does not appear to provide any discretion in the rate of the interest charged. N.Y. C.P.L.R. 5004(a) sets the pre-judgment interest rate at 9.00% per annum and this Court will set the rate at that level.

Harrison provides a chart in his reply which indicates that the award should be calculated at \$100,078.13. This calculation appears to be accurate and will be adopted by the Court.

IT IS THEREFORE ORDERED that Defendant/Counterclaimant's Motion to Set Rate for Pre-Judgment and Post-Judgment Interest (Docket Entry #177) is hereby **GRANTED**. The pre-Judgment interest rate is set at 9.00% per annum in accordance with the laws of the State of New York. Based upon an application of this rate to the judgment awarded, Counterclaimant Matthew Harrison is awarded pre-judgment interest in the total amount of \$100,078.13.

IT IS SO ORDERED this 27th day of March, 2024.

A handwritten signature in blue ink, appearing to read "Jason A. Robertson", with a long horizontal flourish extending to the right.

JASON A. ROBERTSON
UNITED STATES MAGISTRATE JUDGE